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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

No. 72-1028

FRED R. FIELD, JR., individually and as President of the New York District Council of the International Longshoremen's Association, Executive Officer of Local 856, and on behalf of all longshoremen, seamen and citizens whose rights are involved and/or have an interest in the establishment of the World Trade Center in the downtown area of the Borough of Manhattan, City and State of New York,

Petitioner,

-against-

UNITED STATES OF AMERICA,
THE CITY OF NEW YORK,
and THE PORT OF NEW YORK AUTHORITY,

Respondents.

REPLY BRIEF TO THE BRIEFS ON BEHALF OF RESPONDENTS, THE PORT OF NEW YORK AUTHORITY AND THE CITY OF NEW YORK

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REPLY BRIEF TO THE BRIEFS ON BEHALF OF RESPONDENTS, THE PORT OF NEW YORK AUTHORITY AND THE CITY OF NEW YORK

POINT I

BOTH RESPONDENTS HAVE TRUNCATED THE QUESTIONS PRESENTED AND BY MEANS OF LEGALISTIC LEGERDEMAIN AND HAVE ATTEMPTED TO CAMOUFLAGE THE TRUE QUESTIONS PRESENTED, BY OBSCURING THE TRUE ISSUE AND SUBMITTING ALIEN QUESTIONS TO THE QUESTIONS INVOLVED.

Respondent, United States of America, served no opposition as yet.

The City of New York, on pages 4, 5, 8 and 9 and The Port of New York Authority on pages 5 and 6 of their briefs, have submitted the question of ownership and operation of certain piers.

This is not a relevant or pertinent question.

The ownership and operation of the piers was never claimed by petitioner.

Both respondents take the position that the part of the Hudson River in question was non-navigable. This position is based on erroneous concept in conflict with common knowledge and true fact, as well as petitioner's affidavit submitted to the Trial Court that the area in question was in continuous daily operation, employing thousands of citizens and utilizing hundreds of ships, as well as maintaining and repairing docks and piers at a recent expenditure of millions of dollars.

This is also in clear conflict with well established and uniform law, as pointed out on page 7 of petitioner's brief.

The argument that the elimination of the piers on the alleged basis of "in aid of navigation" has no support in fact and is contrary to the uncontroversial and admitted charge that the Hudson River fill was used as a foundation for real estate business, with a refusal by respondents to stand by their agreement that they would aid in establishing a terminal in aid of navigation.

Another example of the attempted diversion from the true question presented is the reference on page 9 of the brief of respondent, The Port of New York Authority, to Judge Bauman's statement "I choose to decline to entertain that claim", referring to the question of taxes.

Respondent's brief speaks of "federal tax law" whereas petitioner raises the question of illegal City tax benefits depriving citizens of New York City of some twenty-five million dollars in tax revenues annually. Not federal taxes.

The fact remains that it is common knowledge that the economy of the City of New York has been seriously affected by respondents destroying its position as the leading sea port in the world and changing it to one where practically all the steamship companies formerly coming to the Hudson River at the New York side of downtown Manhattan, are barred from the use of the river, which is now a wasteland preparatory to becoming a private real estate project.

POINT II

RESPONDENTS' CITATIONS REFER TO UNRELATED CONCEPTS OF LAW.

For example, the citations on page 10 of brief of The Port of New York Authority, footnote 5, refers to the following cases:

Courtesy Sandwich Shop, Inc. v. Port of New York Authority, 12 N.Y. 2d 379, 190 N.E. 2d 402, 240 N.Y.S. 2d 1 (1963) 375 U.S. 78 (1963), rehearing denied, 375 U.S. 960 (1963). This case deals with the question of condemnation of private property, with no reference to the dumping of refuse into navigable waters.

Matter of Port of New York Authority (World Trade Center), certiorari denied sub. nom. *McInnes v. Port of New York Authority*, 385 U.S. 1006 (1967). 18 N.Y. 2d 250, 219 N.E. 2d 797, 273 N.Y.S. 2d 337 (1966). This case deals with condemnation of reality, not obstruction of navigation.

Port Authority Bondholders Protective Committee v. Port of New York Authority, 387 F. 2d 259 (2d Cir. 1967), aff'g 270 F. Supp. 947 (S.D.N.Y. 1967). This case deals with reducing the grade of a post office employee.

Merns, Inc. v. Department of Highways of City of New York, N.Y.L.J. June 26, 1967, p. 15, cols. 7-8 (Sup. Ct., N.Y.Co.). There is nothing in this case comparable to the questions involved in the subject matter of the petition herein.

Wien v. Port of New York Authority, 23 N.Y. 2d 668, 242 N.E. 2d 746 295 N.Y.S. 2d 491 (1968), aff'g 29 A.D. 2d 847,

288 N.Y.S. 2d 592 (1st Dept. 1968), aff'g N.Y.L.J. August 4, 1967, p. 8, cols. 2-6 (Sup. Ct., N.Y.Co.). This case dealt with an inland television broadcasting station, not interference with maritime shipping.

Petitioner does not question the holding in *Bush Terminal Co. v. City of New York*, 282 N.Y. 306, 26 N.E. 2d 269 (1940), cited on page 10 of respondent's brief, which treats with the question of an inland terminal as to exemption from taxation of property devoted to a public use.

The question of public use is a controversial issue. Petitioner's complaint is based on the fact that a real estate operation for private profit and use is not in anywise devoted to, but on the contrary, is destructive of public rights and constitutes unfair tax exemption.

The holding in *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 18 How. 421 (1856) 13 How. 518 (1952), cited on page 9, in nowise changes the controlling law that a river navigable, in fact, cannot be declared non-navigable as a matter of law.

On page 6 respondent cites *United States v. Republic Steel Corp.*, 362 U.S. 482 (1960). Respondent truncates the holding in said case. The Court, at page 889 makes it quite clear that the term "obstruction" as used in the Rivers and Harbors Act refers to any deposit which affects the navigable capacity of the river. No the entire river.

As heretofore stated, it is a matter of common knowledge that shipping on the New York side of lower Manhattan has been substantially, if not completely, eliminated by the obstruction.

As to the authorities cited by the respondent, The City of New York, the case of *Langdon v. Mayor*, 93 N.Y. 128 (1883) cited at page 5, speaks of "control" of wharves and wharfage. Petitioner never claimed the right to such control.

The case of *Delaware and Hudson Coal Co. v. Lawrence*, 2 Hun. 163 (N.Y. Sup. Ct., 1873), aff'd 56 N.Y. 612 1874) on page 7, infers that petitioner seeks greater rights than the general public. Nothing can be further from the truth. Petitioner is acting not only on his own behalf and the thousands of people employed in the industry which he represents, but also on behalf of all citizens who are burdened by the unlawful tax favoritism involved herein.

The glib statement on the alleged authority of *Gilman v. Philadelphia*, 3 Wall. (70 U.S.) 713 (1865), cited on page 9, that there is no federal jurisdiction is the very statement which petitioner claims constitutes error as a conflict with well settled law, as pointed out in petitioner's brief.

Further indulgence in truncating decisions is demonstrated by respondent citing the case of *People v. N.Y. and S.I. Ferry Co.*, 68 N.Y. 71, on page 5 in support of its argument, by the tenuous argument that because Congress has the power to regulate commerce, it may violate constitutional rights and deprive citizens of their opportunity to make a livelihood and to declare waters navigable in fact to be non-navigable as a matter of law.

On page 7 of its brief, respondent cites *Sound Marine & Machine Corp. v. Westchester County*, 100 F. 2d 360, (2d Cir. 1939), cert. den. 306 U.S. 642 (1942) and *Appleby v. City of New York*, 235 N.Y. 351, 139 N.E. 474 (1923), rev'd o.g., 271

U.S. 364 (1926), on the basis that navigation is a public right and erroneously concludes that thereby the State of New York and the City did not deprive the petitioner and citizens of the State of New York of vested rights, and had the power to dump thousands of tons of refuse and fill into the Hudson River.

In point is the comment by the Court in *Sound Marine & Machine Corp. v. Westchester County*, supra at page 362 which stated:

> "As a practical matter, a maritime right is thus invaded by a pipe running from the land under an easement by virtue of which the sewer derives its right of passage through the old channel."

The fill in the case at bar is far more extensive than that caused by the sewer pipe in the aforementioned case.

A reading of the opinion in *Utah v. United States*, 403 U.S. 9, 91 S. Ct. 1775 (1971), cited by petitioner on page 7 of its brief, has been misinterpreted by respondent on page 9 of its brief.

CONCLUSION

It is respectfully submitted that the petition merits consideration by this Honorable Court in the furtherance of substantial justice, as well as being one of general public concern.

Respectfully submitted,

JACOB RASSNER
Attorney for Petitioner